IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.4406 of 2006

Mr.Tabarez Mohamad Sutar — Applicant
Vs.
State of Maharashtra — Respondent

Mr.J.Shekhar i/b. J. Shekhar & Co. for applicant.
Mrs.M.H. Mhatre, APP for State.

CORAM: B.H.MARLAPALLE,J.

January 22, 2007.

P.C.

. Heard the learned counsel for the applicant who is one of the accused in Sessions Case No.288 of 2006 and facing trial for offences punishable under Sections 148, 302 read with Section 149, 332 read with Section 149 of IPC and Section 4(25) of the Arms Act as well Section 37(1) read with Section 135 of the Bombay Police Act. He had applied for being released on bail and the learned Ad-hoc Addl. Sessions Judge No.12, at Pune was pleased to reject the bail application.

. The learned counsel for the applicant submitted that one of the co-accused Vijay Choudhari has been released by this Court on bail on 14/8/2006 i.e. prior to the rejection of the applicant's bail

application by the learned Addl. Sessions Judge on 18/11/2006 and the recovery alleged to have been made at the instance of the applicant of two weapons is doubtful. It is further submitted that none of the witnesses have come out with the name of the applicant as being a person involved in the trial.

. On hearing the learned counsel for the applicant and on perusal of the post-mortem notes, the learned Addl. Sessions Judge noted that the deceased Balasaheb Kasbe died of 15 ante mortem injuries and most of them are reported to have been inflicted by choppers and all over the body. The investigation report further stated that after the applicant was arrested on 28/1/2006, on the basis of his statement, two weapons have been recovered, the first being a Koyta with steel blade of 31 cms. length and 5 cms. width together with blood stained clothes from the terrace of his house kept amongst baskets, trunks and other articles. The place of discovery was in the goods kept on the terrace of his house. The learned counsel for the applicant stated that the discovery was not from the terrace of the applicant's house but it was from the terrace of a building in which the applicant's flat is located and

the said terrace was open for entry to anyone. This cannot be a reason to doubt the discovery at least at this stage, more so when the post-mortem indicates that the injuries inflicted on the person of the deceased correspond with the injuries that can be caused by the weapons recovered. So far as the case of Vijay Choudhari is concerned, this Court specifically noted that the name of the said accused was not stated as one of the assailants and he was not a member of the unlawful assembly. Therefore, the order passed by this Court on 14/8/2006 releasing he accused - Vijay Choudhari cannot be relied upon.

. The reasoning set out by the learned Ad-hoc Addl. Sessions Judge cannot be termed as perverse or unjust and I agree with the same.

. The application is hereby rejected. The trial is expedited.

(B.H